

**CORONAVIRUS STATE FISCAL RECOVERY FUND  
GRANT AGREEMENT**

DEQ AGREEMENT NO XXX-XX

**OREGON ARPA FINANCIAL AID**

This grant agreement (“Agreement”), dated as of the date the Agreement is fully executed, is between the State of Oregon, acting through its Oregon Department of Environmental Quality (“DEQ” or “State”), and **RECIPIENT** (“Recipient”), both individually without distinction as “Party” and collectively as the “Parties.” This Agreement becomes effective only when fully signed and approved as required by applicable law (“Effective Date”). Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire **March 31, 2027** (“Expiration Date”).

This Agreement includes Exhibit A - Contact Information, Use of Funds/Project Description and Reporting Requirements, Exhibit B - Coronavirus State Fiscal Recovery Fund Federal Requirements, Exhibit C - Insurance Requirements, Exhibit D - Federal Award Identification, Exhibit E – Recipient Requirements. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The documents comprising this Agreement are listed in the first sentence of this paragraph from highest to lowest precedence.

Pursuant to Oregon Laws 2021, chapter 669, section 114, DEQ is authorized to distribute grant funds from funds received by the State of Oregon under the federal American Rescue Plan Act Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802) for the purpose of providing financial assistance to public agencies or qualified institutions for the repair, replacement, upgrade or evaluation of residential or other on-site septic systems, as more particularly described in Exhibit A (the “Project”).

**SECTION 1 - KEY GRANT TERMS**

The following capitalized terms have the meanings assigned below.

**Act:** The federal American Rescue Plan Act Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802), including all implementing regulations (31 CFR 35.1 *et seq.*) and other guidance promulgated by the U.S. Department of the Treasury.

**Grant Amount:** \$\$\$

**Expenditure Deadline:** December 31, 2026

**Obligation Deadline:** June 30, 2024

**SECTION 2 - FINANCIAL ASSISTANCE**

- A. DEQ shall provide Recipient, and Recipient shall accept from DEQ, a grant (the “Grant”) in an amount not to exceed the Grant Amount.
- B. DEQ’s obligations are subject to the receipt of the following items, in form and substance satisfactory to DEQ and its Counsel:

- (1) This Agreement duly signed by an authorized officer of Recipient; and
- (2) Such other certificates, documents, opinions and information as DEQ may reasonably require.

C. Obligation Deadline.

- 1) Pursuant to the Act, Recipient shall **obligate** Grant funds for Eligible Costs (as that term is defined in Section 4) no later than the Obligation Deadline. Funds are obligated on the date an order is placed for Project-related property or services, as well as the date Recipient contracts, subawards, or enters into similar transactions that require payment for Project activities.
- 2) Grant funds may not be used for Project activities obligated after the Obligation Deadline, and any such activities are the sole responsibility of Recipient.
- 3) Recipient shall use principal repayments received prior to December 31, 2024, only for Eligible Costs under this Agreement.

D. Expenditure Deadline. Grant funds may not be expended for Project activities after the Expenditure Deadline. Project activities occurring after the Expenditure Deadline are the sole responsibility of Recipient.

E. Return of Unobligated and Unexpended Grant Funds. Recipient must return to DEQ all Grant funds (i) not obligated by the Obligation Deadline (“Unobligated Funds”) and (ii) not expended by the Expenditure Deadline (even if such funds were obligated by the Obligation Deadline) (“Unexpended Funds”). Recipient must return all Unobligated Funds to DEQ no later than 30 days after the Obligation Deadline and must return all Unexpended Funds to DEQ no later 30 days after the earlier of the Agreement’s termination or the Expenditure Deadline.

F. Return of Principal Repayments on Short Term Loans. Recipient must return to DEQ all principal repayments on Short Term Loans, as that capitalized term is defined in Section 2 of Exhibit A, within 30 days of receipt.

<b>SECTION 3 - DISBURSEMENT</b>
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A. Reimbursement-Based Disbursement. DEQ shall reimburse Recipient for Eligible Costs up to the Grant Amount as set forth in Exhibit A.

B. Conditions to Disbursements. DEQ has no obligation to disburse Grant funds unless:

- (1) DEQ has sufficient funds currently available for this Agreement;
- (2) DEQ has received appropriations, limitations, allotments or other expenditure authority sufficient to allow DEQ, in the exercise of its reasonable administrative discretion, to make payment, and notwithstanding anything in the Agreement, occurrence of such contingency does not constitute a default; and
- (3) Recipient has satisfied all conditions for reimbursement as set forth in Exhibit A.

C. Grant Availability. DEQ’s obligation to make, and Recipient’s right to request, disbursement under this Agreement terminate on the Expenditure Deadline.

#### SECTION 4 - USE OF GRANT

As more particularly described in Exhibit A, Recipient will use Grant funds to carry out the Project. Recipient may only use Grant funds to cover Eligible Costs, as that term is defined in Exhibit A, incurred during the period beginning March 3, 2021, and ending on the Obligation Deadline. Recipient must expend the entire Grant Amount on Eligible Costs no later than the Expenditure Deadline.

#### SECTION 5 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

Recipient represents and warrants to DEQ as follows:

A. Organization and Authority.

- (1) Recipient is a tribal government, public agency, or community development financial institution eligible to receive these funds and provide financial aid to Oregon property owners to repair, replace, or evaluate their septic systems.
- (2) Recipient has all necessary right, power and authority under its organizational documents and applicable Oregon law to execute and deliver this Agreement and incur and perform its obligations under this Agreement.
- (3) This Agreement has been authorized by an ordinance, order or resolution of Recipient's governing body if required by its organizational documents or applicable law.
- (4) This Agreement has been duly executed by Recipient, and when executed by DEQ, is legal, valid and binding, and enforceable in accordance with its terms.

B. Compliance with the Act. Recipient will comply with the terms, conditions and requirements of the Act.

C. Full Disclosure. Recipient has disclosed in writing to DEQ all facts that materially adversely affect the Grant, or the ability of Recipient to perform all obligations required by this Agreement. Recipient has made no false statements of fact, nor omitted information necessary to prevent any statements from being misleading. The information contained in this Agreement, including Exhibit A, is true and accurate in all respects.

D. Pending Litigation. Recipient has disclosed in writing to DEQ all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Grant or the ability of Recipient to perform all obligations required by this Agreement.

#### SECTION 6 - COVENANTS OF RECIPIENT

Recipient covenants as follows:

A. Notice of Adverse Change. Recipient shall promptly notify DEQ of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient related to the ability of Recipient to perform all obligations required by this Agreement.

B. Compliance with Laws.

- (1) Recipient will comply with the requirements of all applicable federal, state and local laws, rules, regulations, and orders of any governmental authority, except to the extent an order of a governmental authority is contested in good faith and by proper proceedings.

(2) Recipient is responsible for all federal or state tax laws applicable to its implementation of the Project and its use of the Grant funds or compensation or payments paid with the Grant funds.

C. Federal Audit Requirements. The Grant is federal financial assistance, and the associated Assistance Listings number is 21.027. Recipient is a subrecipient.

(1) If Recipient receives federal funds in excess of \$750,000 in Recipient's fiscal year, it is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall submit to DEQ a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted to DEQ the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement. Recipient's audit costs are Eligible Costs payable from Grant funds to the extent allowed by 2 CFR 200.425.

(2) Audit costs for audits not required in accordance with 2 CFR part 200, subpart F are unallowable. If Recipient did not expend \$750,000 or more in Federal funds in its fiscal year but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the funds received under this Agreement.

(3) Recipient shall save, protect and hold harmless DEQ from the cost of any audits or special investigations performed by the Federal awarding agency or any federal agency with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and the State of Oregon.

(4) Recipient is authorized to use the Grant funds to pay itself for those administrative costs that are eligible costs under the Act to implement the Project. Recipient's use of Grant funds for administrative costs does not preclude the State of Oregon from later recovering costs from Recipient if the U.S. Department of the Treasury disallows certain costs after an audit.

D. System for Award Management. Recipient must comply with applicable requirements regarding the federal System for Award Management (SAM), currently accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM.

E. Employee Whistleblower Protection. Recipient must comply, and ensure the compliance by subcontractors or subrecipients, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Recipient must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

F. Compliance with 2 CFR Part 200. Recipient must comply with all applicable provision of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including the Cost Principles and Single Audit Act requirements.

G. Federal Employment. DEQ's payments to Recipient under this Grant will be paid by funds received from the United States Federal Government. Recipient, by signing this Agreement certifies neither it nor its employees, contractors, subcontractors or subrecipients who will administer this Agreement are currently employed by an agency or department of the federal government.

H. Recipient Subagreements and Procurements.

Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, “subagreements”) for performance of the Project. If Recipient enters into a contract for performance of work under this Agreement, Recipient agrees to comply with the following:

(1) Subagreements.

- i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
- ii. Recipient shall require all of its contractors performing work under this Agreement to name DEQ as a third-party beneficiary of Recipient’s subagreement with the Contractor and to name DEQ as an additional or “dual” obligee on contractors’ payment and performance bonds.
- iii. Recipient shall provide DEQ with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon DEQ’s request at any time. This paragraph shall survive expiration or termination of this Agreement.
- iv. Recipient must report to DEQ any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.

(2) Subagreement Indemnity.

- i. ***Recipient’s subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon, the Environmental Quality Commission and its members, and the Department of Environmental Quality their officers, agents and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys’ fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient’s subagreement or any of such party’s officers, agents, employees or subcontractors (“Claims”). It is the specific intention of the Parties that DEQ shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of DEQ, be indemnified by the other party to Recipient’s subagreement(s) from and against any and all Claims.***
- ii. Any such indemnification shall also provide that neither Recipient’s subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient’s subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of DEQ or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient’s subrecipient is prohibited from defending the State, or that Recipient’s subrecipient is not adequately defending the State’s interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient’s subrecipient if the State of Oregon elects to assume its own defense.

(3) Subagreement Insurance.

- i. Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit C. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
- ii. Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.
- iii. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.

(4) Recipient shall include provisions in each of its subagreements requiring its contractor(s) to comply with the indemnification and insurance requirements in paragraphs H.(2) and H.(3).

(5) Procurements. Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) Chapters 279 A, B, and C, and rules, ensuring that:

- i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
- ii. All procurement transactions are conducted in a manner providing full and open competition.

(6) Conflicts of Interest. Recipient shall comply with the requirements of 2 CFR 200.318 governing conflicts of interest in the selection, award and administration of contracts for which it will seek reimbursement with Grant funds.

I. RESERVED.

J. Financial Records. Recipient will cooperate with DEQ to provide all necessary financial information and records to comply with the Act's reporting requirements, as well as provide DEQ the reporting required in Exhibit A. Recipient will keep proper books of account and records on all activities associated with the Agreement, including, but not limited to, invoices, cancelled checks, payroll records, instruments, agreements and other supporting financial records documenting the use of the Grant. Recipient will maintain these books of account and records in accordance with generally accepted accounting principles and will retain these books of account and records until five years after the Expenditure Deadline or the date that all disputes, if any, arising under this Agreement have been resolved, whichever is later.

K. Inspection.

Recipient shall permit DEQ, and any party designated by DEQ, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives, at any reasonable time, to inspect

and make copies of any accounts, books and records related to the administration of this Agreement. Recipient shall supply any Agreement-related information as DEQ may reasonably require.

L. Notice of Event of Default. Recipient shall give DEQ prompt written notice of any Event of Default, or any circumstance that with notice or the lapse of time, or both, may become an Event of Default as soon as Recipient becomes aware of its existence or reasonably believes an Event of Default is likely.

M. Contribution/Indemnification.

**(Use if Recipient is a local public agency only; delete if Recipient is a CDFI)**

(1) Contribution.

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) against DEQ or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party’s liability with respect to the Third Party Claim.
- ii. Except as otherwise provided in Paragraph 6.M(2). below, with respect to a Third Party Claim for which DEQ is jointly liable with Recipient (or would be if joined in the Third Party Claim), DEQ shall contribute to the amount of expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of DEQ on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of DEQ on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties’ relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. DEQ’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if DEQ had sole liability in the proceeding.
- iii. Except as otherwise provided in Paragraph 6.M(2) below, with respect to a Third Party Claim for which Recipient is jointly liable with DEQ (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by DEQ in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of DEQ on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of DEQ on the other hand shall be determined by reference to, among other things, the Parties’ relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

(2) Indemnification. Subject to any limitations imposed by State law and the Oregon Constitution, Recipient agrees to the following contract-related indemnification for all projects authorized under this Agreement:

Where Recipient contracts for services or performs project management for a project, Recipient shall accept all responsibility, defend lawsuits, indemnify, and hold State harmless, for all contract-related claims and suits. This includes but is not limited to all contract claims or suits brought by any contractor, whether arising out of the contractor's work, Recipient's supervision of any individual project or contract, or Recipient's failure to comply with the terms of this Agreement.

***(Use the following with CDFIs only; delete for local governments)***

***(1) RECIPIENT SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES LIABILITIES, COSTS (INCLUDING ATTORNEYS' FEES) AND EXPENSES OF ANY NATURE WHATSOEVER RESULTING FROM, ARISING OUT OF, OR RELATING TO THE INTENTIONAL MISCONDUCT, OR RECKLESS OR NEGLIGENT ACTS OR OMISSIONS OF RECIPIENT OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.***

(2) DEQ shall reasonably cooperate in good faith, at Recipient's reasonable expense, in the defense of a covered claim. Recipient shall select counsel reasonably acceptable to the Oregon Attorney General to defend such claim and all costs of such counsel shall be borne by Recipient. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before such counsel may act in the name of, or represent the interests of, DEQ, its officers, employees or agents. DEQ may elect to assume its own defense with an attorney of its own choice and at its own expense at any time DEQ determines important governmental interests are at stake. DEQ agrees to promptly provide Recipient with written notice of any claim that may result in an indemnification obligation hereunder. Subject to the limitations noted above, Recipient may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of DEQ, which consent shall not be unreasonably withheld, conditioned or delayed.

(3) Recipient shall meet the insurance requirements within Exhibit C.

N. Representations and Covenants Regarding Prevailing Wage.

(1) The prevailing wage rate requirements that may apply to the Project are set forth in ORS 279C.800 through 279C.870, the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) and Oregon Laws 2021, chapter 678, section 17 (collectively, state "PWR"), or, if applicable, 40 U.S.C. 3141 et seq. (federal "Davis-Bacon Act"). If applicable, Recipient shall:

- a) comply with PWR, require its contractors and subcontractors to pay the applicable PWR or Davis-Bacon Act rates, and comply with all other Oregon Bureau of Labor and Industries ("BOLI") requirements pursuant to the PWR, including on all contracts and subcontracts and in filing separate public works bonds with the Construction Contractors Board;



- b) pay to BOLI, within the required timeframe and in the appropriate amount, the project fee required by OAR 839-025-0200 to 839-025-0230, including any additional fee that may be owed upon completion of the Project; and
- c) unless exempt under Section 17(2) of Oregon Laws 2021, chapter 678, if Recipient is a “public body” and the Project is a “qualified project,” as those terms are defined in Section 17(3) of Oregon Laws 2021, chapter 678, Recipient shall require each contractor in a contract with an estimated cost of \$200,000 or greater to:
  - i. Enter into a project labor agreement that, at a minimum, provides for payment of wages at or above the prevailing rate of wage;
  - ii. Employ apprentices to perform 15 percent of the work hours that workers in apprenticeable occupations perform under the contract, in a manner consistent with the apprentices’ respective apprenticeship training programs;
  - iii. Establish and execute a plan for outreach, recruitment and retention of women, minority individuals and veterans to perform work under the contract, with the aspirational target of having at least 15 percent of total work hours performed by individuals in one or more of those groups; and
  - iv. Require any subcontractor engaged by the contractor to abide by the requirements set forth in subparagraphs i., ii. and iii. above, if the work to be performed under the subcontract has an estimated cost of \$200,000 or greater.

- (2) Recipient represents and warrants that it is not on the BOLI current List of Contractors Ineligible to Receive Public Works Contracts and that it will not contract with any contractor on this list.
- (3) Pursuant to ORS 279C.817, Recipient may request that the Commissioner of BOLI determine whether the Project is a public works project on which payment of the prevailing rate of wage is required under ORS 279C.840.

O. All employers, including Recipient, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers’ Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subcontractors complies with these requirements.

**SECTION 7 - DEFAULT**

- A. Recipient Default. Any of the following constitutes an “Event of Default” of Recipient:
- (1) Misleading Statement. Any materially false or misleading representation is made by or on behalf of Recipient, in this Agreement or in any document provided by Recipient related to this Grant.
  - (2) Failure to Perform. Recipient fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement, other than those referred to in subsection (1) of this section, and that failure continues for a period of 30 calendar days after written notice specifying such failure

is given to Recipient by DEQ. DEQ may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

- B. DEQ Default. DEQ will be in default under this Agreement if it fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

**SECTION 8 - REMEDIES**

- A. DEQ Remedies. Upon the occurrence of an Event of Default, DEQ may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of DEQ’s obligations to make the Grant or further disbursements, return of all or a portion of the Grant Amount, payment of interest earned on the Grant Amount, and declaration of ineligibility for the receipt of future awards from DEQ. If, as a result of an Event of Default, DEQ demands return of all or a portion of the Grant Amount or payment of interest earned on the Grant Amount, Recipient shall pay the amount upon DEQ’s demand. DEQ may also recover all or a portion of any amount due from Recipient by deducting that amount from any payment due to Recipient from the State of Oregon under any other contract or agreement, present or future, unless prohibited by state or federal law. DEQ reserves the right to turn over any unpaid debt under this Section 8 to the Oregon Department of Revenue or a collection agency and may publicly report any delinquency or default. These remedies are cumulative and not exclusive of any other remedies provided by law.
- B. Recipient Remedies. In the event of default by DEQ, Recipient’s sole remedy will be for disbursement of Grant funds for Eligible Costs of the Project, not to exceed the total Grant Amount, less any claims DEQ has against Recipient.

**SECTION 9 - TERMINATION**

In addition to terminating this Agreement upon an Event of Default as provided in Section 8, DEQ may terminate this Agreement effective upon delivery of written notice to Recipient under any of the following circumstances:

- A. If DEQ anticipates a shortfall in applicable revenues or DEQ fails to receive sufficient funding, appropriations or other expenditure authorizations to allow DEQ, in its reasonable discretion, to make payment under this Agreement.
- B. There is a change in federal or state laws, rules, regulations or guidelines so that the uses of the Grant are no longer eligible for funding.

Upon termination under this section, DEQ shall have no further obligation to reimburse Eligible Costs except those for which Recipient has incurred as of the termination date.

This Agreement may be terminated at any time by mutual written consent of the parties.

**SECTION 10 - MISCELLANEOUS**

- A. No Implied Waiver. No failure or delay on the part of DEQ to exercise any right, power, or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

- B. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- C. Notices and Communication. Except as otherwise expressly provided in this Agreement, any communication between the parties or notices required or permitted must be given in writing by personal delivery, email, or by mailing the same, postage prepaid, to Recipient or DEQ at the addresses listed in Exhibit A, or to such other persons or addresses that either party may subsequently indicate pursuant to this Section.

Any communication or notice by personal delivery will be deemed effective when actually delivered to the addressee. Any communication or notice so addressed and mailed will be deemed to be received and effective five (5) days after mailing. Any communication or notice given by email becomes effective 1) upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system or 2) the recipient's confirmation of receipt, whichever is earlier. Notwithstanding this provision, the following notices may not be given by email: notice of default or notice of termination.

- D. Amendments. This Agreement may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties.
- E. Severability. If any provision of this Agreement will be held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision.
- F. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of DEQ, Recipient, and their respective successors and assigns, except that Recipient may not assign or transfer its rights, obligations or any interest without the prior written consent of DEQ.
- G. Counterparts. This Agreement may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.
- H. Integration. This Agreement (including all exhibits, schedules or attachments) constitutes the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Agreement.
- I. No Third-Party Beneficiaries. DEQ and Recipient are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives or provides, or is intended to give or provide, to third persons any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, unless such third persons

are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

J. Survival. The following provisions, including this one, survive expiration or termination of this Agreement: Sections 2.E, 6 (excepting 6.H, Recipient Subagreements and Procurements), 7, 8, 10.B, 10.C, 10.L and 10.M and the Reporting Requirements of Exhibit A.

K. Time is of the Essence. Recipient agrees that time is of the essence under this Agreement.

L. Attorney Fees. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Agreement will be entitled to recover from the other its reasonable attorney fees and costs and expenses at trial, in a bankruptcy, receivership or similar proceeding, and on appeal. Reasonable attorney fees shall not exceed the rate charged to DEQ by its attorneys.

M. Public Records. DEQ's obligations under this Agreement are subject to the Oregon Public Records Laws.

Recipient, by its signature below, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.



**STATE OF OREGON**  
acting by and through its  
Department of Environmental Quality

**RECIPIENT NAME**

By: \_\_\_\_\_  
Leah Feldon, Deputy Director

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:**

**EXHIBIT A**  
**CONTACT INFORMATION, USE OF FUNDS/ PROJECT DESCRIPTION AND REPORTING REQUIREMENTS**

**CONTACT INFORMATION:**

<b>DEQ</b>	<b>Recipient</b>
State of Oregon, acting by and through its Department of Environmental Quality 700 NE Multnomah Street, Suite 600 Portland, OR 97232	
<b>Contract Administrator:</b> Megan Hendrickson	<b>Contact:</b>
<b>Telephone:</b> 503-539-3295	<b>Telephone:</b>
<b>Email:</b> megan.hendrickson@deq.oregon.gov	<b>Email:</b>

**USE OF FUNDS/ PROJECT DESCRIPTION:**

Recipient shall use the Grant funds to provide financial assistance for the repair, replacement, upgrade, or evaluation of failing or damaged residential or other on-site septic systems (the “Project”). Recipient will offer Financial Aid (as this term is defined in Exhibit A, section 1 below) that includes grants and/or loans to approved applicants that meet Recipient’s financing guidelines.

Recipient will be responsible for all aspects of Project administration, including Project development, outreach and marketing materials, origination and servicing of grants and/or loans to Property owners to finance the evaluation, repair and replacement of on-site septic systems, including connection to available sewerage systems when available. Recipient also will share and coordinate outreach and marketing efforts with DEQ as described in Exhibit A, section 4, below.

The Grant funds shall be used solely for the Project and shall not be used for any other purpose. No Grant funds will be disbursed for any changes to the Project unless such changes are approved by DEQ by amendment.

Subject to the requirements of this Agreement, Recipient is responsible for decisions regarding issuing and servicing Project Financial Aid, including:

1. whether or not to issue Project Financial Aid;
2. borrower and grantee eligibility and application procedures;
3. financial aid amounts;

If Recipient issues loans, Recipient is also responsible for:

1. setting and modifying of Project Financial Aid loan interest rates and other term and conditions;
2. credit determinations;
3. application of Recipient’s internal credit;
4. loan administration and collection policies;
5. repayment terms and conditions; and
6. procedures for loans issued as part of the Project Financial Aid package.

## 1. Definitions

“Certificate of Satisfactory Completion” means the Certificate of Satisfactory Completion or other written approval from the on-site regulatory authority (DEQ or a local public agency) stating that the on-site septic system repair/replacement complies with applicable rules in Oregon Administrative Rules (OAR) Chapter 340.

“Project Activities” means the Recipient’s use of Grant funds to administer and implement its Project Financial Aid program for eligible properties with failing or damaged septic systems.

“Project Financial Aid” means the use of Grant funds to provide grants, loans, or combination of both to qualified applicants.

“Property” means a commercial or residential property that is serviced by an on-site septic system.

## 2. **Project Financial Aid**

To ensure compliance with all applicable consumer lending laws, Recipient will make Project Financial Aid available to applicants on a first-come, first-serve basis, based on application date until the earlier of the Obligation Deadline or the date that all Grant funds have been incurred on Eligible Costs. Recipient may offer grants as well as loans to approved applicants that meet eligibility requirements. Maximum grant amounts available to the property owner will be tiered as described in Table 1 with larger grant amounts offered to lower income households. Income will be based on household income.

Pursuant to FAQ 4.9 of the United States Treasury’s Final Rule: Frequently Asked Questions for the Coronavirus State and Local Fiscal Recovery Funds (“FAQs”), for each Project loan made with Grant funds that matures or is forgiven **on or before** December 31, 2026 (collectively, “Short Term Loans”), Recipient must account for the use of funds on a cash flow basis as follows:

- i. Recipient must track repayment of principal and interest on Short Term Loans (i.e., “program income,” as defined under 2 CFR 200).
- ii. When the Short Term Loan is made, Recipient must report the principal of the loan as an expense.
- iii. Principal payments received on or before the Obligation Deadline may be reused only for Eligible Costs.
- iv. Principal payments received after the Obligation Date must be returned to DEQ within 30 days of receipt.**

Pursuant to FAQ 4.9 of the FAQs, for each Project loan made with Grant funds that matures **after** December 31, 2026 (collectively, “Long Term Loans”), Recipient must project the cost of the loan before obligating Grant funds for the loan. Recipient may do so by one of two methods authorized by the United States Treasury under FAQ 4.9:

- i. Estimate the subsidy cost of the Long Term Loan, which equals the expected cash flows associated with the loan discounted at Recipient’s cost of funding. Recipient’s cost of funding can be determined based on the interest rates of securities with a similar

maturity to the cash flow being discounted that were recently issued by the State of Oregon.

- ii. If Recipient has adopted the Current Expected Credit Loss (CECL) standard issued by the Financial Accounting Standards Board, it may calculate the cost of the Long Term Loan as equal to the CECL-based expected credit losses over the life of the loan.

Under either of the above two methods for measuring the amount of Grant funds used to make Long Term Loans, Recipient is not subject to restrictions under 2 CFR 200.307(e)(1) and need not separately track repayment of principal or interest.

[INSERT SUMMARY OF GRANT AND/OR LOAN PROCESS HERE]

### **3. Eligible Costs**

Unless otherwise terminated or extended, Grant funds under this Agreement shall be available for Project Activities incurred on or before the Obligation Deadline. No Grant funds are available for any expenditures before March 3, 2021.

“Eligible Costs” for Project Activities are

- a) Direct costs for grants, loans, personnel, supplies, marketing, outreach, subawards, and associated activities directly attributable and reasonably necessary for the development and implementation of the Project and as allowed by the Act.
- b) Eligible Indirect costs for overhead are allowed at the rate of 10% of Modified Total Direct Costs or negotiated federal indirect cost rates as described in 2 CFR §200.68, which excludes capital expenditures.

### **4. Marketing and Outreach**

DEQ and Recipient will develop and implement an enhanced outreach effort to target who are low and moderate income. The Parties will coordinate efforts to conduct outreach and marketing activities to build awareness for of this Project and ensure that people in need can access applications for financial aid. Emphasis will be placed on reaching households with the lowest incomes and greatest barriers (e.g., language) to accessing resources.

[OUTREACH and MARKETING PLAN HERE]

### **5. Invoicing and Reimbursement**

On each of April 1st, July 1st, October 1st, and January 1st, Recipient shall submit to DEQ a request for reimbursement of Eligible Costs incurred during the calendar quarter that ended the prior month. DEQ

will reimburse Eligible Costs only for those Project Financial Aid packages for which Recipient has received a Certificate of Satisfactory Completion for the septic system work financed under this Agreement. Requests for reimbursement will itemize each individual property financial aid and include the following information, as applicable: loan and/or grant number, location of property (by county and zip code) for which the loan/grant was made, date the Certificate of Satisfactory Completion was issued, and grant and/or loan amounts. The invoice will also include the request for loan or grant number and the amount of undisbursed Grant funds. Recipient will retain full documentation of all invoices and receipts in its files. If requested by DEQ, Recipient will provide to DEQ proof of payment and backup documentation supporting Recipient’s invoices. Reimbursement requests and related invoices must be sent electronically to [DEQEXP@deq.oregon.gov](mailto:DEQEXP@deq.oregon.gov). Payments will be sent electronically to Recipient within 60 days of DEQ’s invoice approval.

**6. Project Budget:**

Category	Estimated Not-to-Exceed Budget	Total Budget

Rebudgeting Authority: This budget is a projection of actual costs and Recipient may rebudget between the approved expenditure categories up to \$10,000 without seeking approval. Rebudgeting or variance from these projections that exceeds \$10,000 requires approval from DEQ in writing. In no case can the total expenses exceed the approved budget total.

**7. Project Milestones**

Key Milestones are used for evaluating performance on Project as described in the Agreement. Key Milestones can only be changed by mutual agreement of the Parties and amendment of this Exhibit A.

If Recipient anticipates Project Key Milestones will be delayed by more than thirty (30) days, Recipient shall submit a Request for Change Order to the DEQ Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted at least seven (7) business days prior to the Key Milestone completion date shown in this Exhibit A.

Recipient shall not proceed with any changes to Project scope or delivery schedule prior to the execution of an amendment to this Agreement executed in response to DEQ’s approval of a Request for Change Order. A Request for Change Order may be rejected at the discretion of DEQ.

Sample Key Milestone	Description	Estimated Key Dates	Deliverable



1	Website updates and brochure development		Updated website and copy
2	Begin accepting Applications		Application material prepared and staffing assigned
3	Targeted outreach for displaced or hard to reach and low/moderate income		Quarterly reports on presentations, meetings and other outreach efforts
4			Submit complete and accurate reports by deadlines. Amended reports for prior period are allowed.

## REPORTING REQUIREMENTS:

### Schedule

Report Name	Frequency	Due Dates
Project Performance Plan	One-Time	30 days after the Effective Date
Quarterly DEQ and DAS Reports and invoices	Quarterly through the Expiration Date	April 1st, July 1st, October 1st, January 1st for the quarter that ended the prior month
Annual DEQ and DAS Reports	Annually through the Expiration Date	July 1 <sup>st</sup> 2023, 2024, 2025, 2026.
Final DEQ and DAS Report	One-Time	March 31, 2027

### Project Performance Plan

Recipient shall submit to DEQ, using a template and instructions provided by DEQ, the following information in the Project Performance Plan:

1. Problem Statement
2. Goal(s)/Mission Statement
3. Rationales
4. Assumptions
5. Resources and External Factors
6. Activities
7. Intended Results
8. Short-Term Outcomes (if applicable)
9. Intermediate Outcomes (if applicable)
10. Long-Term Outcomes or Final Outcomes

### Quarterly Reports

Recipient shall submit Quarterly Reports to DEQ which shall include such information as is necessary for DEQ to comply with the reporting requirements established by 42 U.S.C. 802, guidance issued by the U.S. Treasury, and 2 CFR Part 200 (known as the “Super Circular”). The reports shall be submitted using a template provided by DEQ that also includes the following minimum information:

1. Expenditure Report
  - a) Quarterly Obligation Amount
  - b) Quarterly Expenditure Amount
  - c) Projects
  - d) Geographic Scope of Project Performance
  - e) Program income earned and expended, if applicable
  - f) Detailed Expenditures (categories to be provided by DEQ)
2. Project Status Update
  - a) Status of project: not started, completed less than 50 percent, completed 50 percent or more, completed.

- b) Progress since last update including project outputs and achieved outcomes.
- c) Identify barriers/risks to outcomes and describe actions taken to mitigate delays/risks to the overall project goal.
- d) Optional: Share with DEQ community outreach/engagement or other positive local news stories.
- e) The Projected or actual construction start date
- f) The Projected or actual initiation of operations date
- g) The project type by Expenditure Category 5.1 – 5.18
- h) Any NPDES (National Pollutant Discharge Elimination System) Permit No. or PWS (Public Water System) ID Number associated with the project (if applicable)
- i) The median household income of the service areas
- j) The lowest Quintile Income of the service areas
- k) If this is a loan program, the following information will be required on subawards:
  - i. Loan maturity date
  - ii. Loan Maturity prior to 12/31/2026 with planned forgiveness
  - iii. Loan Maturity prior to 12/31/2026 without planned forgiveness
  - iv. Loan Maturity past 12/31/2026 with planned forgiveness
  - v. Loan Maturity past 12/31/2026 without planned forgiveness
- l) Narrative summary of outreach activities
- m) Number of projects completed by zip code
- n) Grants and/or loans issued by grant and/or loan amount and income level of property owners

DEQ reserves the right to modify the template according to guidance and requirements provided by U.S. Department of the Treasury and other needs.

### **Annual Reports**

Recipient shall submit to DEQ a report annually on the following, as applicable, using a template provided by DEQ:

1. How the Project is Promoting Equitable Outcomes, if applicable
2. How the Project is Engaging with the Community, if applicable
3. Number of gallons of wastewater treated by new systems under this project
4. Summary of financial aid applications, acceptance rate, financial aid offered, financial aid accepted
5. Summary of outreach activities and outcomes

### **Administrative Costs**

Recipient shall also deliver to DEQ no later than March 15, 2025, an accounting of all of its direct administrative costs paid by this Grant accompanied by a certification statement that all such costs comply with the Act. Grant funds may not be used to pay for administrative costs incurred after the Obligation Deadline.

## **Exhibit B - CORONAVIRUS STATE FISCAL RECOVERY FUND FEDERAL REQUIREMENTS**

### **I. Required Federal Provisions – ARPA Coronavirus State Fiscal Recovery Fund Projects**

#### **General Compliance –**

Third-Party Grant Recipient must comply with the terms, conditions and requirements of the federal ARPA Coronavirus State Fiscal Recovery Fund (codified at 42 U.S.C. 802) from which the project budget is funded, in whole or in part, including all implementing regulations (31 CFR 35.1 *et seq.*) and other guidance promulgated by the U.S. Department of the Treasury (collectively, the statute and implementing regulations are referred to in these provisions as “CSFRF”).

#### **Employee Whistleblower Protection –**

Third-Party Grant Recipient must comply, and ensure the compliance by any of its subcontractors, suppliers or subrecipients, with 41 U.S.C. 4712, “Program for Enhancement of Employee Whistleblower Protection.” Third-Party Grant Recipient must inform its subcontractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

#### **Compliance with 2 CFR Part 200 –**

Third-Party Grant Recipient must comply with all applicable provision of 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” including, but not limited to, the Cost Principles and Single Audit Act requirements.

#### **Federal Funds; Contractor Certification; Federal False Claims –**

DEQ’s payments to Third-Party Grant Recipient under this Agreement will be paid by funds received by DEQ from the United States Federal Government, in whole or in part. By signing this Agreement, Third-Party Grant Recipient certifies neither it nor its employees, subcontractors, suppliers or subrecipients who will administer this Agreement are currently employed by an agency or department of the United States Federal Government. Third-Party Grant Recipient acknowledges that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject Third-Party Grant Recipient to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise under 18 U.S.C § 1001; 31 U.S.C. §§ 3729-3733 and 3801-3812.

#### **Federal Non-Discrimination –**

Third-Party Grant Recipient must comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of the Work. Without limiting the generality of the foregoing, Third-Party Grant Recipient expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975, (e) the Americans with Disabilities Act of 1990, and (e) all other

applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Agreement and required by law to be so incorporated.

**Compliance with 41 CFR § 60-1.4 - Equal opportunity clause -**

During the performance of this Agreement, the Third-Party Grant Recipient agrees as follows:

(1) The Third-Party Grant Recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor Third-Party Grant Recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Third-Party Grant Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Third-Party Grant Recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Third-Party Grant Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Third-Party Grant Recipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Third-Party Recipient's legal duty to furnish information.

(4) The Third-Party Grant Recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Third-Party Grant Recipient's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Third-Party Grant Recipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Third-Party Grant Recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Third-Party Grant Recipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Third-Party Grant Recipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Third-Party Grant Recipient will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Third-Party Grant Recipient will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

### **Copeland Anti-Kickback Requirements.**

Third-Party Grant Recipient must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Each Third-Party Grant Recipient or subcontractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the person is otherwise entitled. Third-Party Grant Recipient acknowledges all suspected or reported violations will be reported to the appropriate Federal awarding agency.

**Compliance with Contract Work Hours and Safety Standards Act -** Third-Party Grant Recipient must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Third-Party Grant Recipient must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

### **Federal Rights to Inventions Made Under a Contract or Agreement –**

The federal funding agency associated with this Agreement, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The Third-Party Grant Recipient agrees that it has been provided the following notice:

(1) The federal funding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:(1) The copyright in any Work developed under a grant, subgrant or contract under a grant or subgrant; and (2) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

(2) If this Agreement meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the Third-Party Grant Recipient or subcontractor wish to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Third-Party Grant Recipient or subcontractor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(3) The Parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

**Byrd Anti-Lobbying Amendment** –Third-Party Grant Recipient must comply with 31 U.S.C. 1352. In addition, each tiered contractor must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Third-Party Grant Recipient and all subcontractors must forward all certifications to the DEQ Grant Administrator.

By signing this Agreement, the Third-Party Grant Recipient certifies, to the best of the Third-Party Grant Recipient’s knowledge and belief that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of Third-Party Grant Recipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Third-Party Grant Recipient shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.

(3) The Third-Party Grant Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

(4) This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **Prohibition on certain telecommunications and video surveillance services or equipment (Huawei and ZTE) –**

Third-Party Grant Recipient is prohibited from obligating or expending funds received under this Agreement to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - (a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - (b) Telecommunications or video surveillance services provided by such entities or using such equipment.
  - (c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

### **Compliance with [Clean Air Act \(42 U.S.C. 7401-7671q.\)](#) and the [Federal Water Pollution Control Act \(33 U.S.C. 1251-1387\)](#), as amended –**

Third-Party Grant Recipient must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported by the Third-Party Grant Recipient to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (“EPA”).

### **Third-Party Grant Recipient Certification: No Federal Debarment or Suspension –**

Third-Party Grant Recipient certifies that it has not been debarred or suspended from being awarded a contract pursuant to the governmentwide exclusions in the System for Award Management (“SAM”), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.”

### **Procurement of Recovered Materials –**

Third-Party Grant Recipient must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include: (a) procuring only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (b) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (c) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **Domestic Preferences for Procurement of Goods, Products or Materials -**



The Third-Party Grant Recipient shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all sub~~contracts~~ and purchase orders for work or products under this Agreement. For purposes of this section the following terms are defined as follows:

- (a) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (b) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**Minority and Women Business Enterprises** -Third-Party Grant Recipient hereby agrees to comply with the requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Accordingly, the Third-Party Grant Recipient hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps include the following:

- (1) Including qualified women’s business enterprises and small and minority businesses on solicitation lists;
- (2) Assuring that women’s enterprises and small and minority businesses are solicited whenever they are potential sources;
- (3) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises;
- (4) Where the requirement permits, establishing delivery schedules which will encourage participation by women’s business enterprises and small and minority business;
- (5) Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce; and
- (6) If any subcontracts are to be let, requiring the prime Third-Party Grant Recipient to take the affirmative steps in a through e above. For the purposes of these requirements, a Minority Business Enterprise (MBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by members of the following groups: Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan Natives. A Women Business Enterprise (WBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by women.

## EXHIBIT C – INSURANCE REQUIREMENTS

Recipient shall obtain at Recipient's expense the insurance specified in this Exhibit C prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Recipient shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Recipient shall pay for all deductibles, self-insured retention and self-insurance, if any.

### **WORKERS' COMPENSATION & EMPLOYERS' LIABILITY**

All employers, including Recipient, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Recipient shall require and ensure that each of its subcontractors complies with these requirements. If Recipient is a subject employer, as defined in ORS 656.023, Recipient shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Recipient is an employer subject to any other state's workers' compensation law, Recipient shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

### **COMMERCIAL GENERAL LIABILITY:**

**Required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Agreement, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

### **AUTOMOBILE LIABILITY INSURANCE:**

**Not required**

### **PROFESSIONAL LIABILITY:**

**Required**

**Professional Liability insurance** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement by the Recipient and Recipient's subcontractors, agents, officers or employees in an amount not less than \$2,000,000 per claim. Annual aggregate limit shall not be less than \$4,000,000. If coverage is on a claims-made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Recipient shall provide Tail Coverage as stated below.

**DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY:**

**Required**

**Directors, Officers and Organization** insurance covering the Recipient's Organization, Directors, Officers, and Trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper governance, employment practices and financial oversight - including improper oversight and/or use of use of grant funds and donor contributions - with a combined single limit of no less than \$2,000,000 per claim.

**CRIME PROTECTION COVERAGE: EMPLOYEE DISHONESTY or FIDELITY BOND**

**Required**

Employee Dishonesty or Fidelity Bond covering loss of money, securities and property caused dishonest acts of a Recipient's employees. Coverage limits shall not be less than \$2,000,000.

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**ADDITIONAL INSURED:**

All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Recipient's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

**WAIVER OF SUBROGATION:**

Recipient shall waive rights of subrogation which Recipient or any insurer of Recipient may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Recipient will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Recipient or the Recipient's insurer(s).

**TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Recipient shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of (i) Recipient's completion and Agency's acceptance of all Services required under this Agreement, or, (ii) Agency or Recipient termination of this Agreement, or, iii) The expiration of all warranty periods provided under this Agreement.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Recipient shall provide to Agency Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this Agreement. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

**NOTICE OF CHANGE OR CANCELLATION:**

The Recipient or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Recipient agrees to periodic review of insurance requirements by Agency under this agreement and to provide updated requirements as mutually agreed upon by Recipient and Agency.

**STATE ACCEPTANCE:**

All insurance providers are subject to Agency acceptance. If requested by Agency, Recipient shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to Agency's representatives responsible for verification of the insurance coverages required under this Exhibit C.

**EXHIBIT D**  
**FEDERAL AWARD IDENTIFICATION**  
**(REQUIRED BY 2 CFR 200.332(A)(1))**

(i) Subrecipient* Name: <i>(must match name associated with UEI)</i>	
(ii) Subrecipient's Unique Entity Identifier (UEI):	
(iii) Federal Award Identification Number (FAIN):	SKFRO4454
(iv) Federal award date: <i>(date of award to DAS by federal agency)</i>	July 23, 2021
(v) Grant period of performance start and end dates:	Start: Effective Date End: December 31, 2026
(vi) Grant budget period start and end dates:	Start: March 3, 2021 End: December 31, 2026
(vii) Amount of federal funds obligated by this Grant:	
(viii) Total amount of federal funds obligated to Subrecipient by pass-through entity, including this Grant:	
(ix) Total amount of the federal award committed to Subrecipient by pass-through entity**: <i>(amount of federal funds from this FAIN committed to Recipient)</i>	
(x) Federal award project description:	Coronavirus State Fiscal Recovery Fund
(xi) a. Federal awarding agency:	U.S. Department of the Treasury
b. Name of pass-through entity:	Oregon Department of Environmental Quality
c. Contact information for awarding official of pass-through entity:	Jennifer Wigal, jennifer.wigal@deq.oregon.gov
(xii) Assistance listings number, title and amount:	Number: 21.027 Title: Coronavirus State and Local Fiscal Recovery Funds Amount: \$2,648,024,988.20
(xiii) Is award research and development?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xiv) a. Indirect cost rate for the federal award:	
b. Is the 10% de minimis rate being used per 2 CFR § 200.414?	Yes <input type="checkbox"/> No <input type="checkbox"/>

\* For the purposes of this Exhibit D, "Subrecipient" refers to Recipient and "pass-through entity" refers to DEQ.

\*\* The total amount of federal funds obligated to the Subrecipient by the pass-through entity is the total amount of federal funds obligated to the Subrecipient by the pass-through entity during the current state fiscal year.

**EXHIBIT E**  
**RECIPIENT REQUIREMENTS**

1. Recipient must ensure that construction contractors performing septic installations, repairs and replacements are certified and licensed as required by OAR 340-071-0600.
2. Recipient agrees to require that if a residence or small business with a damaged, malfunctioning or inoperable on-site septic system is located where a sewer connection is available as provided in ORS 454.655(4), a loan provided to address the damaged, malfunctioning or inoperable on-site septic system must be used to install a connection to the available sewer and to properly decommission and discontinue use of the on-site septic system.
3. Recipient must provide a mechanism for ensuring compliance with any locally required operation and maintenance of an on-site septic system for which a loan is provided under a loan program.